

OEA/Ser.L/V/II.

Doc. 119

7 August 2019

Original: Spanish

**REPORT No. 110/19**  
**PETITION 254-08**  
REPORT ON INADMISSIBILITY

K.J.G.T ET AL.  
MEXICO

Electronically approved by the Commission on August 7, 2019.

**Cite as:** IACHR, Report No. 110/19, Petition 254-08. Inadmissibility. K.J.G.T. et al. Mexico.  
August 7, 2019.

**I. INFORMATION ABOUT THE PETITION**

<b>Petitioner:</b>	Luis Oscar González Zuñiga
<b>Alleged victim:</b>	K.J.G.T <sup>1</sup> et al. <sup>2</sup>
<b>Respondent State:</b>	Mexico <sup>3</sup>
<b>Rights invoked:</b>	The petitioner is not invoking specific rights

**II. PROCEEDINGS BEFORE THE IACHR<sup>4</sup>**

<b>Filing of the petition:</b>	February 29, 2008
<b>Additional information received at the stage of initial review:</b>	March 13 and 27, and December 29, 2008; April 12 and September 14, 2009; July 9, 2010; March 12, 2011; January 23 and December 8, 2012; and February 10, 2014
<b>Notification of the petition to the State:</b>	June 2, 2016
<b>State's first response:</b>	February 2, 2017
<b>Additional observations from the petitioner:</b>	January 18, 2018
<b>Additional observations from the State:</b>	April 20, 2018

**III. COMPETENCE**

<b>Competence <i>Ratione personae</i>:</b>	Yes
<b>Competence <i>Ratione loci</i>:</b>	Yes
<b>Competence <i>Ratione temporis</i>:</b>	Yes
<b>Competence <i>Ratione materiae</i>:</b>	Yes, American Convention (instrument of ratification deposited on June 22, 1987)

**IV. DUPLICATION OF PROCEDURES AND INTERNATIONAL *RES JUDICATA*, COLORABLE CLAIM, EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION**

<b>Duplication of procedures and International <i>res judicata</i>:</b>	No
<b>Rights declared admissible</b>	None
<b>Exhaustion of domestic remedies or applicability of an exception to the rule:</b>	No, under the terms of Section VI
<b>Timeliness of the petition:</b>	N/A, under the terms of Section VI

**V. FACTS ALLEGED**

1. Mr. Luis Oscar González Zúñiga (hereinafter “the petitioner” or “Mr. González”), father of K.J.G.T., who was 7 years old at the time of the events in question, and K.M.G.T., who was 10, and brother of Leticia González Zuñiga (hereinafter “Ms. González”) (hereinafter also “the alleged victims”), requests that the Mexican State be found responsible for violating his children’s rights and constitutional guarantees by not having ensured them access to education, in a context involving allegations of child maltreatment at the

<sup>1</sup> The names of the alleged victims (hereinafter “K.J.” and “K.M. G.T”) are being kept confidential because they are children, a boy and a girl.

<sup>2</sup> K.M.G.T., Luis Oscar González Zúñiga, and Leticia González Zúñiga.

<sup>3</sup> Pursuant to the provisions of Article 17(2)(a) of the Commission’s Rules of Procedure, Commissioner Joel Hernández García, of Mexican nationality, did not participate in the discussion or the decision on this case.

<sup>4</sup> The observations submitted by each party were duly transmitted to the opposing party.

Colegio Felipe Ángeles Claves (hereinafter “the school”), a public educational institution. The petitioner alleges acts of corruption inside the Secretariat of Public Education (SEP), the Office of the Public Prosecutor, and the school over the failure to investigate the case and take the necessary precautions to ensure access to education free of bullying. The petitioner also claims there were reprisals against himself and his sister.

2. The petitioner indicates that in 2006 he complained to school, state, and federal authorities about acts of physical and psychological abuse of his daughter K.M. by a teacher, Alma Angélica García López. He indicates that after he made the complaint, an administrative investigation was opened; this was monitored by the Federal Educational Services Administration (AFSEDF), with the participation of the Child Maltreatment and Sexual Abuse Care Unit (UAMASI). In a communication dated September 14, 2006, the AFSEDF informed the petitioner that to protect the children’s physical and psychological integrity, the teacher in question had been relocated to a different office until the conflict could be definitively resolved. In addition, by means of a resolution on September 22, 2006, the AFSEDF verified infractions of SEP regulations and psychological abuse of K.M.G.T. The teacher in question was punished with a disciplinary measure and a reprimand and reassigned to duties that would not include activities in front of groups. The SEP indicated that the complaint was resolved with this measure, and it offered its apology for the maltreatment the girl had suffered. The petitioner was not satisfied with this measure, so he filed a remedy of complaint (*recurso de inconstitucionalidad*) on May 3, 2007. However, information on the results of that complaint has not been attached.

3. The petitioner claims that, despite the actions taken by the SEP, the maltreatment and discrimination continued and were extended to his son K.J.G.T., so he filed complaints with the school and educational agencies. He indicates that instead of processing his complaints and taking the necessary measures to investigate and to punish those responsible, the school took actions to retaliate and to harm his physical and mental integrity, along with that of his children, using his sister, Ms. González—aunt of the alleged victim and an employee at the same school—to intimidate him into withdrawing his complaints. With respect to his son K.J.G.T., the petitioner indicates that during the 2006-2007 school year the boy was subject to maltreatment and acts of humiliation by another teacher at the school; these consisted of flunking him in math during the first two bimonthly periods and forcing him to take five tests in one day and then showing his grades to his fellow students and humiliating him in front of them. Regarding the petitioner’s sister, the petitioner alleges that she was also a victim of retaliation and suffered “work harassment” when she was dismissed on grounds that she had abandoned her job.

4. The petitioner also alleges that as part of the bullying and acts of discrimination carried out against the alleged victims, on March 5, 2007, the Parents Association, with the acquiescence of school authorities, closed the school facilities to block their entry and distributed pamphlets claiming that they were dangerous and that they jeopardized the other students’ physical integrity and their education and well-being. The petitioner also claims that these individuals have continued to deny educational services to the alleged victims to this day and that the school’s administration has held onto his children’s academic documents and has said that these would not be returned to them until a purported demand that the children be relocated had been resolved. This reportedly prevented the alleged victims from being enrolled in another school. The petitioner also indicates that a criminal complaint was even fabricated against Ms. González, in which she was accused of stealing a cell phone and for which she was deprived of her liberty.

5. The case file shows that the petitioner lodged several complaints with the complaints section of the Internal Oversight Body (OIC) of the SEP; however, details of these complaints were not provided. In a communication dated June 22, 2006, the OIC informed the petitioner that the allegations made in his communications of June 6 and 7, 2006, remained under investigation, under the case file numbers SI-245/2006 and DE-275/2006. In a communication dated August 15, 2006, the petitioner was informed that the OIC was awaiting the result of the UAMASI investigation into the alleged maltreatment by the teacher Alma Angélica García López. On September 5, 2006, case file SI-245/2006 was apparently closed and complaint DE-461/2006 was opened, as the investigation that was done revealed facts that suggested that administrative irregularities had been committed. On October 26, 2006, it was reportedly determined that the case file in question should be turned over to the accountability section of the Internal Oversight Body, which had jurisdiction in the matter. In terms of case file DE-275/2006, it was indicated that Ms. González had been summoned and that supplementary information had been requested from the Primary Education Sector

Coordination Office. However, on October 26, 2006, it was reported that there was no evidence of administrative irregularities against Ms. González. Finally, the petitioner reportedly made several complaints over arbitrary actions and abuse of authority committed by SEP public servants, which he lodged with the Secretariat of Civil Service (SFP)<sup>5</sup>; the SFP issued a decision saying that it lacked jurisdiction and sent the complaints on to the Internal Oversight Body of the SEP. No further information was provided on the outcome of these procedures. However, the petitioner maintains that the SEP did not rule with respect to the denial of educational services, nor did it reinstate the children's constitutional right to education.

6. In addition, on July 4, 2007, the petitioner complained to the Sub-directorate of Child Abuse Prevention and Treatment about the denial of access to the school for the alleged victims—including his sister, who worked there—and about the acts of defamation to which they were subjected by means of the pamphlet mentioned above. In addition, the petitioner reports that in 2007 he lodged complaints with the Office of the President of the Republic and the Office of the Attorney General of the Republic (PGR), as well as various agencies,<sup>6</sup> and asked the PGR to initiate criminal proceedings against the President of the Parents Association, school authorities, and SEP officials for abuse of authority, intimidation, improper use of power and authority, and discrimination. On September 13, 2007, the petitioner presented the PGR with a copy of the complaint filed with the SEP regarding the denial of the alleged victims' right to education; this was forwarded to the Deputy Attorney General for Regional Oversight, Criminal Proceedings, and Constitutional Protection (*Amparo*). In a communication dated February 8, 2010, the Deputy Attorney General's Office indicated that the petitioner had been asked on various occasions to present himself along with his children so that their statements could be taken and a psychological test performed, necessary steps to be able to decide the issue. The case file shows that in a communication dated June 21, 2010, the Deputy Attorney General's Office notified the petitioner that the preliminary investigation would be suspended as there was not enough evidence available, and that it was necessary for him to provide more evidence to determine whether criminal proceedings were warranted. In a communication of November 10, 2010, the PGR indicated that there was no reason to reactivate the case, due to a lack of new evidence and because the children were not taken in for the psychological test in question. On April 28, 2014, the PGR reiterated that the petitioner's refusal to present the alleged victims to give statements and to be evaluated for harm led it to issue a suspension of the preliminary investigation on June 24, 2010, and indicated that the petitioner had yet to comply with the requests. The case file also shows that on June 12, 2009, given the lack of response and the delay in the investigations, the petitioner submitted a complaint to the PGR Internal Oversight Body concerning the actions of a public servant at the PGR, citing the lack of analysis and evaluation and excessive delay with regard to the conduct of high-level officials assigned to the SEP. No further information was provided in this regard.

7. In addition, the case file shows that in September 2007, an administrative investigative proceeding was opened by the area of the National Human Rights Commission that handles accountability issues, complaints, and rules. In a communication dated March 25, 2008, this office indicates that the petition is still under study. The case file does not include additional information.

8. In February 2014, the petitioner sent communications to the President of the Republic informing him about irregularities committed against the alleged victims by various educational authorities and indicating that as of that time, he still did not have the official academic accreditation for primary school. These communications were passed on to the Secretariat of Education, which responded on June 12, 2014, by indicating to the petitioner that the paperwork verifying the last grade of primary education that his children had completed could be processed in that same office. The petitioner indicates that to gain access to the school, he filed a challenge in the Federal Court of Fiscal and Administrative Justice and an appeal on constitutional grounds (*amparo*) directly with the collegial courts; however, he did not provide related

<sup>5</sup> This includes communications received by the SFP on February 6, 12, 14, 16, and 21; March 5, 8, 12, 20, 28, and 29; and May 21, 2007, as well as those received on January 28 and 29 and February 20 and 26, 2008.

<sup>6</sup> The petitioner reached out to the following agencies: the SEP Internal Oversight Body, the Office of the President of the Republic, the Secretariat of Civil Service, the Secretariat of the Interior, the Secretariat of the Supreme Court, the Federal District Human Rights Commission, the General Supervisor of Educational District No. 25, the General Supervisor of Educational District No. 177, the Office of Citizen Services, the Sub-secretariat of Legal Affairs and Human Rights, the Unit for the Promotion and Defense of Human Rights, and the National Council for the Prevention of Discrimination.

documentation. The information provided shows that the alleged victims were unable to attend school as of March 5, 2007. In a communication dated February 10, 2014, the petitioner indicates that they have still not been given the children's documents.

9. Regarding Ms. González, the petitioner indicates that she filed a direct *amparo* appeal in response to her dismissal and obtained a judgment in her favor on October 3, 2008, which ordered her to be reinstated. He claims that the court's decision verified that there had been an arbitrary dismissal and abuse of authority, and that his sister, as well as the petitioner and his children, had been denied access to the school on March 5, 2007. On March 17, 2009, the First Circuit's Third Collegial Court on Labor Matters rejected an *amparo* appeal filed by the SEP against that decision. However, the documents provided by the petitioner include a communication from Ms. González dated February 16, 2009, directed to the President of the Republic, the Head of School District No. 25, and the Secretary of Public Education, informing them that after it had been decided to reinstate her, teachers from the school, with the acquiescence of SEP officials, had blocked her entry into the school.

10. For its part, the State claims that domestic remedies have yet to be exhausted and that there is no colorable claim. In addition, the State indicates that the IACHR cannot become a fourth instance, which means that it cannot turn itself into a high court that reviews questions of fact and law; rather, its role is to consider violations of human rights, a situation that does not arise in the case at hand. The State concludes that the petition should be disregarded and asks the Commission to find the petition inadmissible.

11. In terms of criminal proceedings related to conduct by public servants that could constitute a crime—such as collusion amongst public servants, abuse of authority, discrimination, and intimidation—the State indicates that on March 9, 2007, a report on the matter became the basis for a preliminary investigation. However, the State contends that these crimes, except for abuse of authority, were dismissed for lack of sufficient and convincing evidence. In terms of the investigation into the crime of abuse of authority, this was suspended subject to further investigation should new information emerge. The State adds that the statute of limitations for bringing criminal action for abuse of authority expired on December 21, 2014. It indicates that the petitioner filed a complaint with the Inspector General's Office of the PGR; this was resolved on October 5, 2011, with a suspension of the investigation due to a lack of evidence and because the alleged victims failed to appear to give a statement when requested to do so by the ministerial authority. The State underscores that such suspension decisions temporarily put an investigation on hold, which means that this decision does not terminate petitioners' rights to file a challenge to demand that the investigation be continued. The State indicates that the petitioner had the option to have lodged an appeal with respect to the criminal process, or to have pursued an indirect *amparo* proceeding. Finally, as the petition was lodged in 2008 and the criminal proceedings ended in 2011, the State maintains that when the petitioner resorted to the IACHR, he had not yet exhausted domestic remedies.

12. In terms of the complaint regarding the obstruction of the alleged victims' right to education, the State maintains that the petitioner's allegations should be dismissed. It reports that an administrative investigation was opened into that complaint, on March 23, 2007, and staff members from the complaints section of the Internal Oversight Body of the SEP were commissioned to conduct an inspection of the school's surrounding area to ascertain the situation regarding the alleged victims' access to the facility. The State indicates that two inspection visits were conducted, in March and May 2007, which found that neither the petitioner nor the alleged victims were showing up at the school. The SEP thus verified that the children's access to the school was not being blocked. The State also indicates that the decisions that were issued could have been challenged via contentious-administrative proceedings. It reported that such a remedy could modify decisions made by administrative authorities, including the SEP, and could obtain a result in keeping with the petitioner's claim, but that he did not seek such a remedy. The State also indicates that by means of an official communication dated June 12, 2014, the Deputy Director of Administration and Personnel of the Primary Education Sector Coordination Office informed the petitioner that the paperwork verifying the last grade of primary education that his children had completed could be processed by the Primary Education Sector Coordination Office; however, the State claims that the petitioner did not go to the Coordination Office to do so, nor did he try to enroll his children in another public institution.

13. Finally, with respect to the allegation of the criminal proceedings brought against Ms. González for the crime of theft, and her deprivation of liberty, the State reports that she was cleared and released; at the same time, it noted that no documents about the case have been provided.

## VI. ANALYSIS OF EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

14. With respect to the complaint over the alleged victims' maltreatment, the petitioner went through an administrative process, filing a complaint with the Secretariat of Public Education (SEP) in 2006. After that complaint was filed, an administrative investigation was opened, which was monitored by the Federal Educational Services Administration (AFSEDF), with the participation of the Child Maltreatment and Sexual Abuse Care Unit (UAMASI). In a resolution of September 22, 2006, the AFSEDF verified infractions of regulations of the Secretariat of Public Education (SEP) and psychological abuse of K.M.G.T., and the teacher in question was punished. The petitioner was not satisfied with this measure, so he filed a remedy of complaint on May 3, 2007. However, the Commission notes that as of today, the IACHR does not have any information about the results of that complaint or any contentions that it is still pending. The petitioner also filed complaints with the complaints section of the Internal Oversight Body of the SEP, which reportedly led to investigations being opened. However, the case file does not include information about the results of such complaints. For its part, the State indicates that the decisions issued could have been challenged through contentious-administrative proceedings, a remedy that the petitioner did not pursue.

15. In terms of the petitioner's claim regarding his conflict with the school authorities, the Commission lacks sufficient information to determine whether remedies have been exhausted. The State contends that by means of an official communication dated June 12, 2014, the Deputy Director of Administration and Personnel of the Primary Education Sector Coordination Office informed the petitioner that he could get the paperwork processed at the Primary Education Sector Coordination Office to obtain evidence of the last grade in primary school that his children completed. However, the State claims that the petitioner did not go to the Coordination Office to do so, nor did he attempt to enroll the children in another public institution. The case file does not include more information in that regard.

16. With respect to the criminal complaint in the Attorney General's Office, the case file shows that on June 24, 2010, the investigation was suspended due to the petitioner's refusal to have his children appear before an Examining Committee so that their statements could be taken and a psychological test performed, even though they were convened on several occasions. The Commission notes that the case file does not show that the petitioner lodged an appeal or filed a constitutional challenge (*amparo*) for the inquiry to be reopened if he believed there were new facts to present—both remedies identified by the State.

17. The Commission notes that on June 12, 2009, the petitioner submitted a complaint to the PGR Internal Oversight Body concerning the actions of a public servant at the PGR, citing a lack of analysis and evaluation and excessive delay with regard to the conduct of high-level officials assigned to the SEP. However, the case file does not include any additional information in that regard. The petitioner also filed complaints with the National Human Rights Commission. On July 3, 2007, his application was declared admissible, and an investigation was opened on September 25, 2007. However, the case file does not include a response, and the result of the investigation is unknown.

18. Finally, considering the facts alleged with respect to Ms. González, while the case file includes a judgment confirming that there was a labor case involving an unjustified dismissal, the alleged victim obtained a judgment in her favor in that proceeding, as well as in the subsequent *amparo* appeal presented by the SEP. However, in a communication dated February 16, 2009, addressed to the President of the Republic, the Head of School District No. 25, and the Secretary of Public Education, the petitioner reports that following the decision to reinstate her, teachers from the school, with the acquiescence of SEP officials, blocked her entry into the school. However, the petitioner has not presented arguments or provided proper verification that there is a final decision that violates her rights or, alternatively, that the case remains open; therefore, the IACHR cannot determine whether the exhaustion requirement has been met or any of its exceptions. With respect to the allegation of the criminal proceeding brought against her for the crime of

theft, and her pretrial detention, the State reports that she was cleared and released, while noting that no documents about that case have been provided.

19. The information available thus shows that the petitioner went through an administrative process before the SEP as well as a criminal process. However, based on the information available, and given the lack of information that would allow a better analysis of the case, it is not possible to verify whether the petitioner exhausted remedies in the context of these two proceedings, nor have arguments or information been presented concerning reasons these could have been hampered. In this regard, based on the information available, the Commission concludes that it cannot verify whether the petitioner has invoked and exhausted the available domestic remedies or whether there is a situation in which an exception to the exhaustion of domestic remedies could apply. Based on the foregoing, the Commission concludes that this petition is inadmissible under the terms of Articles 46(1)(a) and 47(a) of the American Convention and Article 31(1) of the Rules of Procedure, and it is not necessary to proceed with the analysis of the other admissibility requirements.

### **VIII. DECISION**

1. To find the instant petition inadmissible;
2. To notify the parties of this decision; publish the decision; and include it in the Commission's Annual Report to the General Assembly of the Organization of American States.

Approved by the Inter-American Commission on Human Rights on the 7<sup>th</sup> day of the month of August, 2019. (Signed): Esmeralda E. Arosemena Bernal de Troitiño, President; Antonia Urrejola, Second Vice President; Margarette May Macaulay, Francisco José Eguiguren, Luis Ernesto Vargas Silva, and Flávia Piovesan, Commissioners.